

REMARKS

This paper is submitted in reply to the Office Action dated February 12, 2007. Reconsideration and allowance of all pending claims are respectfully requested. Claims 1-3, 5-36, and 46-80 are pending, with independent claims 1, 13, 46, 55, 74, and 78 being amended, dependent claims 2, 6, 9, 14, 25, 28, 47, 49, 51, 56, 61, 62, and 64 being amended to conform therewith, claims 37-45 and 81 being cancelled without prejudice to seek the subject matter thereof in a further filing (claims 82-85 having been previously canceled without prejudice), and claim 4 being canceled as being redundant. Applicants respectfully submit that no new matter is being added by the above amendments.

In the subject Office Action, claims 1-31, 46-67, 72-74, and 78 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,501,665 to Jhuboo ("Jhuboo"), and claims 37-44 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0205587 to Tribe (Tribe). Moreover, claims 32, 34, 36, 68, 70, 76-77 and 80 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jhuboo further in view of Tribe, and claims 33, 35, 45, 69, 71, 75 and 79 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jhuboo and further in view of U.S. Patent No. 6,485,465 to Moberg ("Moberg").

Applicants thank Examiner for the consideration extended in the telephonic interview between Examiner and one of Applicants' representatives May 1, 2007, during which interview it was agreed that amending the independent claims as now being done, and canceling claims 37-45 and 81, would overcome Examiner's objections and rejections in the instant Office Action. During further telephonic interviews between Examiner and undersigned counsel on August 7, 2007, Examiner advised that a further rejection based on Jhuboo in light of the recent

Supreme Court KSR decision is being contemplated. Given the finality of the instant Office Action, Applicants are submitting the present Amendment with the previously-agreed upon claim amendments and an RCE such that prosecution may continue in order to address Examiner's newly-raised concerns about Jhuboo.¹

With respect to Jhuboo, Examiner explained that the reference discusses a variable Δt which, she argues, could "approach zero" such that the "average pressure" values obtained in Jhuboo arguably becomes a point or instantaneous pressure values. Not so. Jhuboo expressly focuses on obtaining and utilizing average pressures. Unless Δt actually equals zero, mathematically there will be an averaging process. And Jhuboo by its own terms would have to fail if Δt were to collapse to zero because the gradient to be determined in Jhuboo uses Δt as a denominator ($S = \Delta P / \Delta t$, at col. 5, l. 5).² Were $\Delta t = 0$, the result would be a gradient of infinity (dividing by zero), rendering Jhuboo useless. The KSR decision certainly did not intend to wipe away such mathematical reality, nor provide an excuse to rewrite the teachings of a reference based on a reading of an Applicant's own disclosure or claims.

Under the circumstances, it is respectfully submitted that Examiner's original agreement to the now-amended claims was and is still proper, and that the pending claims are in condition for allowance.

CONCLUSION

In summary, Applicants respectfully submit that all pending claims are novel and non-obvious over the prior art of record. Reconsideration and allowance of all pending claims

¹ Undersigned counsel requested that the finality of the instant Office Action be withdrawn since that Action is itself based on a change in Examiner's previously expressed position. The instant Office Action should thus have been a second, non-final Action. Examiner's refusal (unjustifiably in Applicants' view) necessitated the filing of the RCE and the costs thereof.

² Per Jhuboo, the Δt interval is initially set to one minute (col. 5, ll. 53-54) and can go up if the system is noisy and down if the system is less noisy. It is questionable whether, as a practical matter, Δt could be expected to approach zero.

are therefore respectfully requested. If Examiner has any questions regarding the foregoing, or which might otherwise further this case onto allowance, Examiner is requested to contact undersigned counsel to discuss same. Applicants are concurrently submitting the fees for the three-month Extension of Time and the RCE via electronic credit card payment. However, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,
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